



WISCONSIN REGULATORY DIGEST

A Publication of the
DEPARTMENT OF REGULATION AND LICENSING FOR PRIVATE DETECTIVES
Volume 11, No. 2 AND PRIVATE DETECTIVE AGENCIES November, 1999

Licensing Statistics

As of October 5, 1999, there were 951 private detective and 714 private detective agency licenses in active status.

Complaints Against Private Detectives

The Department received 9 complaints against private detectives and private detective agencies between January 1, 1999 and September 15, 1999. Four complaints were closed after screening, 4 were closed after investigation (some from the previous year), and no cases were closed with formal disciplinary action.

PRIVATE DETECTIVE ADVISORY COMMITTEE

Members of the Committee:

Johnny Cash (Sun Prairie)
David S. Cihlar (Oshkosh)
James Gilboy (Hales Corners)
Robert F. Hoeg (Madison)
Paul C. Klumb (Chenequa)
James M. Krause (Menomonee Falls)
Karen Moreles (Milwaukee)
Edward J. O'Brien (Holmen)
Gary Peterson (Eau Claire)
John R. Schatzman (Milwaukee)
Steven T. Watson (Madison)

Administrative Staff:

Cletus J. Hansen, Division Administrator

Executive Staff:

Marlene A. Cummings, Secretary
June Suhling, Deputy Secretary
Myra Shelton, Executive Assistant

Complaints Against Private Security Persons

The Department received 45 complaints against private security persons or their employing agency between January 1, 1999, and September 15, 1999. Seven complaints were closed after screening, 22 were closed after investigation (some from the previous year) and 11 cases were closed with formal disciplinary action.

Private Detective Advisory Committee

The committee had two meetings since the last issue of the Regulatory Digest was printed. The following items have been taken from the minutes of the committee meetings:

Committee members expressed concern about the names used by some agencies. Concern was also expressed about the use of the state seal on badges and letterhead. Administrator Clete Hansen informed the committee of the attorney general's opinion that the state seal may be used unless it is used with the intent to mislead or misrepresent.

The committee commented on permitting a private detective to be armed. Comments

Contents

Licensing Statistics.....	1
Complaints Against Private Detectives	1
Complaints Against Private Security Persons	1
Private Detective Advisory Committee	1
Training Resources	5
Decisions of Wisconsin Supreme Court	5
Wisconsin Circuit Court Cases.....	5
Disciplinary Actions	5
Telephone Directory and Miscellaneous	6

emphasized the need to be qualified to carry a firearm and to keep current; the need to continue range practice for accuracy; and the need for criteria for keeping up-to-date with training. One member stated that unless you raise the standards for education and training, you would not get a qualified individual to carry firearms.

Some committee members advised that the Professional Association of Wisconsin Licensed Investigators (PAWLI) has no official position on permitting private detectives to carry a concealed firearm.

Secretary Cummings explained that the nursing industry is working on a nurses license compact bill where requirements for practice will be the same throughout the United States. Discipline will take place in the home state.

Administrator Clete Hansen indicated that private detective fees are scheduled to decrease. He also indicated that the Department experiences problems when renewing licenses for private detectives and private security persons because these licenses can only be renewed if the individuals work for an agency. The agency license must, therefore, be renewed first. This makes the renewal process more hands-on and less computer-oriented. A legislative proposal would have the agencies renew one year and the individual agents renew the following year. Separate legislation is being worked on to permit this change.

The Private Security Advisory Committee recommended a 90-day temporary permit for private security persons. This issue will also be included in the proposed legislation.

Clete Hansen referred to the information he received from surrounding states in relation to carrying firearms. He indicated that a majority of the surrounding states put the responsibility on the local unit of government to issue firearms permits.

Secretary Cummings and the committee discussed the qualifications required for a

person to carry a concealed weapon and the need for zero tolerance for incompetence.

Committee members agreed that Defense and Arrest Tactics (DAT) training would need to be mandatory for carrying concealed weapons.

Committee members who prefer to carry concealed weapons gave reasons for that need. They indicated that not all private detectives want or need to carry weapons. Those who do should have initial training and regular on-going training.

Clete Hansen stated that the Private Security Advisory Committee is recommending several classifications of security guards with various levels of training and responsibility.

The committee discussed the rules for carrying weapons for “executive protection.” Some members felt it was an unfair advantage that sworn officers can be bodyguards and carry a concealed weapon, whereas private detectives acting as private security persons cannot. Committee members recommended that the playing field should be leveled by changing the statutes to create a separate license for “executive protection” and that executive protection people should be permitted to carry a concealed weapon.

The committee unanimously passed a motion recommending a separate license for private detective agencies and private security companies.

The committee discussed the need for a standardized photo identification card for private detectives that can be used by all professions. The advisory committee members recommended that the department should use a two-sided license. Information on the front of the license (the name and address of licensee, license number, expiration date, and room for signature of licensee) should remain. It was recommended that enough room be left on the back of the license for the name of the private detective agency, the private detective agency address and phone number, the physical description of the private detective, and a photo

of the bearer. Individual licensees would be responsible for filling out the information, attaching a photo and laminating the card if they so choose.

The committee unanimously recommended that the department should create a two-sided computer-generated license to be used by all licensed private detectives.

The committee unanimously recommended that a provision be added to RL 33.06 (2), Stats., which should exempt a licensee from having a written contract “when providing services to an insurance company.”

Computer Forensic Companies

The following letter was prepared by Legal Counsel, William Black, in response to an inquiry:

You have asked whether a computer forensic company of the type described below falls within the regulatory scheme of s. 440.26 Stats. It is my opinion that it does not. Its activities either fall outside of the traditional definition of private detective work, or would qualify as exempt under RL 30.02(12)(b)10.

FACT SCENARIO

The following five factor background is presented:

Turnkey Network Security Solutions.

Assist third parties recovering hidden, deleted, encrypted, and/or damaged data; litigation support; expert witness testimony.

Electronic Discovery

Civil litigation forensic services - restore or recover from a wide variety of systems. Consultants help to preserve and collect evidence.

Forensic Analysis

Gather data. Employ techniques to find deleted, hidden or forgotten evidence. Work performed on site or at lab. Consultants piece together an event or chain of events by restoring deleted or password-protected files. Tracking patterns of individuals or groups through evidence left on electronic calendars, e-mail, and data files, pull together a detailed picture of fraud, sabotage, theft, espionage and other destructive acts.

Electronic Search & Seizure

Assistance in pre-search warrant preparations and post-seizure handling of the computer equipment. Maintaining control over the proper seizure and

subsequent evidence gathered. Assistance in drafting interrogatories. What devices should be requested in a subpoena. Procedures in maintaining a verifiable chain of evidence. Maintenance and proper protection of electronic evidence. Evaluate electronic evidence.

Consultants

Be able to account for the complete chain of evidence. Know the legal requirements for admissible expert witness testimony.

OPINION

What constitutes private detective work can be elusive to define given that the statute and rules contemplate a private detective calling himself or herself as such, thus falling within the statute, or doing specific acts generally considered within the scope of private detective work. Often, an expert will perform an investigation and analysis of evidence. From this expert’s work product an opinion regarding a factual or legal issue will often be formed and presented at trial. However, this expert will not be deemed a private detective for purposes of the statute.

The extent and scope of an investigation and the license requirements necessary to undertake such an investigation arises in different contexts often involving expert witnesses and consultants. Rule RL30.02(12)(b)10 contemplates that certain scientific researchers, laboratory personnel and expert consultants are not included under the definition of private detective. Although case law is sparse concerning the definition of the term “private detective”, rule RL30.02(12)(b)10 codifies certain principles regarding a workable definition by exception. A definition is also proposed to outline the characteristics of private detective work in **76 Op. Att’y Gen. 35 (1987)** (Opining that fire investigators may be hired and conduct their specialty without regard to licensure under the private detective law.)

Private detectives have three principal characteristics:

1. They are an unofficial person, not an employee of a governmental agency.
2. They are engaged in obtaining information in secret, in that it is without the knowledge of the person being observed.
3. The information is obtained and transmitted to a third party. **37 OAG 469, 470 (1948). 53 OAG 183, 185 (1964)**

The openness of observation of a person removes the element of secrecy and thus no private detective license is necessary. **37 OAG 542 (1948)** (persons being observed are told of the observation, and it is done in their presence.) Observations of persons in secret naturally also include gathering information about a person from information sources in secret. This extra dimension of the definition appears to be impliedly assumed as it plays such a major part in any detective work. Therefore, within the context of this discussion it is assumed that the term “observations of a person in secret” includes visual observation and informational data gathering, as these are the two major facets of private detective work.

Using the reasoning either that no person is being observed in secret, or that the exception of RL 30.02(12)(b)10 applies, the activities described in the FACT SCENARIO do not constitute work for which a private detective license is needed. Indeed, RL 30.02(12)(b)10 impliedly codifies nothing more than the acknowledgement that the types of activities listed therein do not involve “observations of persons in secret” and thus don’t qualify as private detective activities needing licensure.

In the area of a specialty or expertise the concept of “observations of persons in secret” loses meaning since the expert is consulting in or observing or testing a tangible physical object to discover facts about the object itself.

The distinction is critical because once a fact is discovered pertaining to an object, that fact may or may not be connected to a person. The nature and quality of the fact observed relating to the tangible physical object may directly connect to a person or may need additional facts or inferences to do so. However, it was the fact pertaining to the tangible physical object itself that was observed, not the person.

This special role of the expert, or forensic specialist is noted thusly, “...no expert witnesses, whether they be arson experts or any of hundreds of other types of experts, are required to be licensed as private detectives under section [440.26], merely because they may investigate matters relating to their fields of expertise”. **76 OAG 35 (1987)**

In approving fire investigator investigations without licensure, the Attorney General drew from the similar analogies of pathologists (investigating a cause of death) or an accountant (investigating a corporate takeover or white-collar crime). *Id.* Because these are individualized fields of expertise

such work is excluded from the requirement for licensure. Such work is also excluded because it does not fit the three-part definition provided consistently by the Attorney General in its opinions on this subject.

In a like manner, the computer forensic specialist is an area of expertise and technical practice not requiring licensure if practiced within the restraints of the FACT SCENARIO. The reason lies in recognizing what computer forensics is not. Computer forensics is not using a computer to merely perform investigations traditionally done with binoculars, or cameras, or to access information contained in other data banks or computer systems as part of an investigation. Computer forensics instead focuses on the computer itself as a tangible physical object to be observed. (Note- Tangible in this sense means anything capable of being observed, whether encoded electronically as with a computer, or genetically, chemically, or otherwise by a physical process.)

This is a critical distinction, that for the forensic computer expert the computer itself is the object of the investigation versus being used merely as an additional tool to obtain information in an investigation. In the former instance the computer forensic specialist is similar to a fire investigator who examines tangible physical objects to determine the cause of a fire, or the accountant who examines corporate books to determine evidence of white-collar crime. Similar to a DNA or fingerprint investigator, a computer forensic specialist employs laboratory research techniques and specialized analytical equipment to determine characteristics of a tangible physical object, ie.. a computer (and any processes that encode information) that may or may not lead to the discovery of evidence.

CAVEAT - The traditional use of the computer as an investigation tool to discover evidence and access data not germane to the computer itself is still certainly an activity for which a private detective license is necessary. The use of the computer as an investigative tool in this way does not qualitatively differ from traditional investigative techniques that observe a person (or information relating to them) in secret without their knowledge. Therefore if a computer forensic company were to offer services whereby they would access other data banks or computer systems to search for evidence or information as and for its own sake, this would satisfy the traditional definition of observing of a person in secret and licensure would be necessary. However, it must be strongly reinforced that this

type of activity does not appear to be within the scope of the FACT SCENARIO.

Finally, any work performed in the context of litigation discovery using statutory authorized discovery mechanisms is certainly not information gathering or observation in secret and any consulting services related thereto would not need licensure.

Training Resources

Dejustice Coleman, a licensee from Milwaukee, WI, has asked us to inform you about a training manual he has prepared, entitled Security Guard Training By Experts. Mr. Coleman and his company, DISC Private Investigators, Ltd., can provide training for you. For more information, call 414-372-5775.

If you have a training manual you wish us to acknowledge, please send us some information about it.

Decisions of the Wisconsin Supreme Court

In *Miller v. Wal-Mart Stores, Inc.*, 219 Wis. 2d 250 (June 1998), the Wisconsin Supreme Court upheld the decision of the Court of Appeals to award punitive damages, based on the following situation: a loss-control officer testified that Wal-Mart did not train him regarding Wisconsin's retail theft statute on the rights and duties of merchants and customers, and, as a result, he understood that he had the right to recover merchandise from suspected shoplifters, that he could make a citizens arrest, that he had more latitude than police officers in conducting a search of a person, and that that he did not need consent from suspected shoplifters to question them. In addition, the Court was influenced by the fact that the Wal-Mart store manager and assistant manager, who were present when the loss-control officer stopped the plaintiff, also testified that they were not trained regarding Wisconsin's retail theft statutes.

In *Peters v. Menard, Inc.*, 224 Wis. 2d 174 (March 1999), the Court reviewed the actions of 2 security guards employed by Menard's who chased a person suspected of stealing an electric drill. The employees chased the person across the parking lot and to the edge of the La Crosse River. The chase ended when the suspect dove

into the swollen river and was swept into the river's middle and drowned. The Court concluded that the statutes provide immunity to a merchant or its agents for action taken while attempting to detain a person, including pursuit, as long as the statutes' reasonableness requirements are met: 1) there must be reasonable cause to believe that the person violated s. 943.50 (shoplifting law); 2) the manner of detention and actions taken in an attempt to detain must be reasonable; and 3) detention and actions taken in the attempt to detain must continue for only a reasonable length of time.

Wisconsin Circuit Court Cases

Private detective agencies and others find the Web site of the Wisconsin Circuit Court to be a valuable tool for their investigations and for checking out potential employees. In the latter case, employers may want to check to see whether an applicant has been convicted of a crime substantially related to the practice of a private detective or a private security person. In some instances an employer may save application fees by not sending an application to the Department and subsequently learning that the applicant has a criminal record.

Note that records of some counties are not on-line. Also, some counties may not have entered their old cases into the system. The Web site address is:

<http://ccap.courts.state.wi.us/InternetCourtAccess/>

Disciplinary Actions

None.

Department of Regulation and Licensing
Private Detective Section
P.O. Box 8935
Madison, WI 53708-8935

RETURN SERVICE REQUESTED

REGULATORY DIGEST

Bulk Rate
U.S. Postage
Paid
Madison, WI
Permit No. 1369

Telephone Directory

The telephone number for staff is:

(608) 266-5511

After dialing this number you may listen to a menu or you may immediately press one of the following extension numbers:

Application Forms	Press 11
Complaints Against Licensees	Press 12
Whether A Person is Licensed	Press 442
Application Processing & Requirements	Press 43
Changes of Employment	Press 43

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>
Send comments to dorl@drl.state.wi.us

Copies of Regulatory Digest on the Web

See the Web site listed above for past issues of the Regulatory Digest.

Wisconsin Statutes and Code

Copies of the Wisconsin Statutes and Administrative Rules Relating to the Practice of Private Detectives and Private Security Personnel can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated April, 1998.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided, but may be verified by calling the Bureau office one week after mailing the changes.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

Subscription Service

Bi-annual digest subscriptions are published for all Boards housed within the Department at a cost of \$2.11 each per year. CREDENTIAL HOLDERS RECEIVE THEIR REGULATORY DIGEST FREE OF CHARGE. Others may send the fee and this form to the address listed above.

Subscription Service Order Form

Name

Company/Organization

Street Address/P.O. Box

City/State/Zip + 4

County

Digest(s) desired: